

From: Barbara Ritchie [BARBARA.RITCHIE@fmc.com]
Sent: Monday, December 16, 2013 3:06 PM
To: Rochlin, Kevin
Subject: FW: Sho-Ban Second Request for Inspection
Attachments: 2013.12.12 Request for Inspection _ Second.pdf

Categories: 11-19 to 1-10 2014

Please call me, or tell me what time works for you. Coupla things to ask about.

From: Echo Hawk, Paul [<mailto:pechohawk@kilpatricktownsend.com>]
Sent: Thursday, December 12, 2013 3:42 PM
To: Ralph Palumbo
Subject: FW: Sho-Ban Second Request for Inspection

Call me about this when you get a minute today if possible. I know you're on the go and probably pretty busy

Paul Echo Hawk

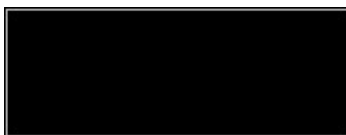
Kilpatrick Townsend & Stockton LLP
Suite 4400 | 1420 Fifth Avenue | Seattle, WA 98101
office 206 224 2850 | fax 206 299 3951
pechohawk@kilpatricktownsend.com | [My Profile](#) | [vCard](#)

From: Horst, Rebecca
Sent: Thursday, December 12, 2013 1:39 PM
To: Bill Bacon; Celine Leigland; Cherly McCrum; David Heineck; Echo Hawk, Paul; Lee Radford; Maureen Mitchell; Ralph Palumbo; Tina Moore (tzm@moffatt.com)
Cc: Shannell L. Bernal; Thea Teton Appenay
Subject: Sho-Ban Second Request for Inspection

Good afternoon,

Please find the attached on behalf of Paul Echo Hawk of this office.

Best,



Rebecca Horst

Paralegal
Kilpatrick Townsend & Stockton LLP
Suite 4400 | 1420 Fifth Avenue | Seattle, WA 98101
office 206 224 2864 | fax 206 623 6793
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another party any transaction or matter addressed herein.

----- Summit Law Group -----

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***** ATTACHMENT NOT DELIVERED *****

This Email message contained an attachment named
image001.jpg

which may be a computer program. This attached computer program could contain a computer virus which could cause harm to EPA's computers, network, and data. The attachment has been deleted.

This was done to limit the distribution of computer viruses introduced into the EPA network. EPA is deleting all computer program attachments sent from the Internet into the agency via Email.

If the message sender is known and the attachment was legitimate, you should contact the sender and request that they rename the file name extension and resend the Email with the renamed attachment. After receiving the revised Email, containing the renamed attachment, you can rename the file extension to its correct name.

For further information, please contact the EPA Call Center at (866) 411-4EPA (4372). The TDD number is (866) 489-4900.

***** ATTACHMENT NOT DELIVERED *****

2013.12.12 Request for Inspection _ Second.pdf

Paul C. Echo Hawk
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Attorneys for Appellants and Counterclaimants

IN THE SHOSHONE-BANNOCK TRIBAL COURT OF APPEALS
FOR THE FORT HALL RESERVATION, IDAHO

SHOSHONE-BANNOCK TRIBES
LAND USE DEPARTMENT AND
FORT HALL BUSINESS COUNCIL,

Appellants and Counterclaimants,

vs.

FMC CORPORATION,

Respondents.

Case Nos. C-06-0069
C-07-0017
C-07-0035

**APPELLANTS'/COUNTERCLAIMANTS'
SECOND REQUEST FOR INSPECTION
OF FMC PROPERTY**

Pursuant to Shoshone-Bannock Law and Order Code Section 3.34(a)(2), Appellant/Counterclaimant Shoshone-Bannock Tribes Land Use Department and Fort Hall Business Council ("Tribes") hereby submit this second request for Respondent FMC Corporation to permit entry upon the e FMC Pocatello property for the purpose of inspection, measuring, surveying, photographing, testing, and sampling areas of the property. This second request is necessary because scheduling and completing the inspections within the previous timeframe was

not feasible due to circumstances beyond the Tribes' control. For example, there were a number of scheduling issues related to coordination of a number of individuals and federal agency schedules. Compliance with federal regulations as ordered by this Court also required additional time to complete. In addition, the original dates for the inspection to occur between November 9-22 were proposed before the trial was continued and based on the prior discovery deadline. The Trial has now been continued and the discovery deadline extended to February 17, 2014. Thus, there is no prejudice to FMC by allowing the inspection the Tribes have a right to conduct as legitimate and necessary discovery under Tribal LOC Section 3.34(a)(2).

The Tribes have been able to complete some groundwater sampling, through obtaining split samples during FMC's regularly scheduled quarterly groundwater sampling, but the Tribes need additional time to inspect for remaining water, soil, and air issues. Specifically, this second request for inspection includes the following:

1. Water
 - a. Collection of leachate water from waste storage Ponds (including all RCRA ponds)
2. Soil
 - a. Soil gas samples from perimeter of all ponds generating phosphine and other gases. Sampling will commence approximately five (5) feet from outside perimeter of caps at depths to be specified, and continue in five (5) foot increments until two (2) zero readings of phosphine and other gases are measured.
 - b. Soil samples from perimeter of all known areas with elemental phosphorus.
3. Air

- 2013.12.12 Request for Inspection _ Second.pdf
- a. Sampling and/or testing of air emissions around ponds both on and off the FMC Pocatello property.

The time and date for entry on FMC Pocatello property shall be **before February 17, 2014 from 9:00 a.m. MST to 5:00 p.m. MST.**

The following individuals will be participating in the site visit activities:

Susan Hanson, Tribal Contractor

Kelly Wright

David Reisman

Tribal contractors and technicians

Tribal Police Officer

In accordance with Section 3.34 of Chapter 3 of the Shoshone-Bannock Tribes Law and Order Code a response is requested within fifteen (15) days of the date of this request. A copy of Section 3.34 is attached hereto as Exhibit A.

Dated this 12TH day of December, 2013.

KILPATRICK, TOWNSEND & STOCKTON LLP


Paul C. Echo Hawk

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12TH day of December 2013, a copy of the foregoing has been served by the method indicated below, and addressed to the following:

Lee Radford, Esq.
P.O. Box 51505
Idaho Falls, ID 83405
Telephone: (208) 522-6700
Facsimile: (208) 522-5111

- ☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (Fax)
☒ Email (klr@moftat.com)

Ralph H. Palumbo
David M. Heineck
SUMMIT LAW GROUP PLLC
315 Fifth Avenue South, Suite 1000
Seattle, WA 98104-2682
Telephone: (206) 676-7000
Facsimile: (206) 676-7001

- ☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (Fax)
☒ Email (ralphp@SummitLaw.com)
davidh@SummitLaw.com
maureenm@SummitLaw.com
CherylM@SummitLaw.com

CLERK OF THE COURT
Tribal Court of Appeals
PO Box 306
Fort Hall, ID 83203

- ☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (Fax)
☒ Email (tteton@sbtribes.com)

KILPATRICK, TOWNSEND & STOCKTON LLP

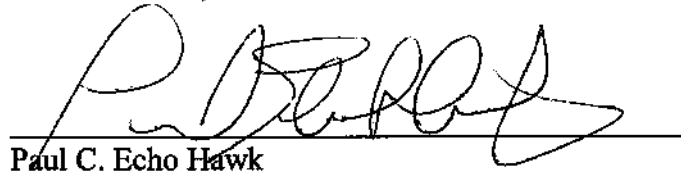

Paul C. Echo Hawk

EXHIBIT A

Section 3.34Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes(a) Scope

Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phone-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Section 3.26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Section 3.26(b).

Section 3.34(cont.)(b) Procedure

The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and related acts. The party upon whom the request is served shall serve a written response within 15 days after the service of the request, except that a defendant may serve a response within 20 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Section 3.37(a) with respect to any objection to or other failure to respond to the request or any objection to or other failure to permit inspection as requested.